

TIFFANY & BOSCO, P.A.

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TB File No. 21-71703

Attorneys for *Secured Creditor* Guild Mortgage Company LLC

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

IN RE:

CAROLINA FLORES TT,

Debtor.

BK Case No. 21-50695-nmc

Chapter 13

**OBJECTION TO CONFIRMATION
OF CHAPTER 13 PLAN**

OBJECTION TO CONFIRMATION OF PROPOSED CHAPTER 13 PLAN

Guild Mortgage Company LLC (“Creditor”), Secured Creditor in the above-entitled Bankruptcy proceeding, hereby submits the following Objection to Confirmation of Chapter 13 Plan (“Objection”) proposed by the Debtor, Carolina Flores TT (“Debtor”). This Objection is based on the authorities cited herein and on such additional submissions and argument as may be presented at or before the confirmation hearing.

I. STATEMENT OF FACTS

Creditor’s claim is evidenced by a promissory note executed by Debtor and Katherine M. Johns and dated November 21, 2018, in the original principal sum of \$258,990.00 (the “Note”). The Note is secured by a deed of trust (the “Deed of Trust”) encumbering the real property commonly known as 429 15th St, Sparks, NV 89431. Together, the Note and Deed of Trust are collectively referred to hereafter as the “Loan”.

1 Creditor is in the process of finalizing its proof of claim for this matter and
 2 estimates that its total secured claim is in the approximate amount of \$288,273.52 and that
 3 its pre-petition arrearage claim is in the approximate amount of \$41,097.43.

4 On October 18, 2021, the Debtor filed their Chapter 13 Plan (the “Plan”) providing
 5 for monthly payments to the Trustee in the total amount of \$5,220.00 over thirty-six (36)
 6 months. The Debtor’s Plan provides that the Debtor will sell the Subject Property by May
 7 30, 2022 and does not provide for any ongoing monthly payments or any provision for the
 8 cure of Creditor’s pre-petition arrears in the approximate amount of \$41,097.43.

9 Creditor now objects to the Chapter 13 Plan filed herein by the Debtor.

10 **II. ARGUMENT**

11 The provisions of 11 United States Code (“U.S.C.”) Section 1325 set forth the
 12 requirements for the Court to confirm a Chapter 13 Plan. The burden is on the debtor to
 13 demonstrate that the plan meets the conditions essential for confirmation. Warren v.
 14 Fidelity & Casualty Co. of N.Y. (In re Warren), 89 B.R. 87, 93 (9th Cir. BAP 1988). For
 15 the reasons detailed herein, the Debtor fails to meet this burden.

16 **A. THE PLAN FAILS TO PROMPTLY CURE CREDITOR’S PRE-PETITION** **ARREARS AS REQUIRED UNDER 11 U.S.C. §1322(b)(5).**

17 Section 1322(b)(5) of the Bankruptcy Code provides for the curing of any default
 18 on a secured or unsecured claim on which the final payment is due after the proposed final
 19 payment under the plan. Creditor’s secured claim consists of approximately \$41,097.43
 20 in pre-petition arrears, however, the Plan fails to provide for the cure of those arrears.
 21 Debtor will have to increase their monthly payment through the Chapter 13 Plan to
 22 Creditor by approximately \$1,141.60 in order to cure Creditor's pre-petition arrears over
 23 a period not to exceed thirty-six (36) months. That is especially true where, as is the case
 24 here, the Property is the Debtor’s primary residence and so cannot be modified pursuant
 25 to 11 U.S.C. §1322(b)(2). As the Plan fails to promptly cure Creditor’s pre-petition
 26 arrears, it cannot be confirmed as proposed.

B. THE PLAN FAILS TO PROVIDE FOR ONGOING POST-PETITION PAYMENTS.

Section 1322(b)(5) of the Bankruptcy Code provides for the maintenance of post-petition payments on a secured or unsecured claim on which the final payment is due after the proposed final payment under the plan. 11 U.S.C. § 1322(b)(5). Here, the loan relating to Creditor's secured claim matures December 1, 2048, which is after the term of the Plan, yet the Plan fails to properly provide for ongoing post-petition payments as it provides that the Debtor will sell the Subject Property by May 30, 2022. However, a potential sale of the property is not guaranteed, and failure to maintain post-petition payments leaves Creditor without adequate protection while the plan is pending. As the Plan fails to provide for the maintenance of post-petition payments on Creditor's secured claim, it cannot be confirmed as proposed.

C. THE CHAPTER 13 PLAN IS INFEASIBLE.

Pursuant to 11 U.S.C. section 1325(a)(6), a Court shall not confirm a plan unless the debtor will be able to make all payments under the plan. Schedule J indicates that the Debtor has disposable income of -\$326.85 per month. However, the Debtor proposes to apply \$145.00 per month to their Chapter 13 Plan. Moreover, as previously indicated, Debtor will have to increase their monthly payment by approximately \$1,141.60 to cure Creditor's pre-petition arrearages, notwithstanding ongoing monthly payments, suggesting the Debtor has insufficient monthly income to fund the Plan and properly provide for Creditor's secured claim. Accordingly, the Plan does not have a reasonable likelihood of success and cannot be confirmed as proposed.

Any Chapter 13 Plan proposed by the Debtor must provide for and eliminate the Objections specified above in order to be feasible and to provide adequate protection to this Creditor. As it fails to do so, it is respectfully requested that Confirmation of the Chapter 13 Plan as proposed by the Debtor be denied.

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1 WHEREFORE, Creditor prays as follows:

- 2 1. That confirmation of the proposed Chapter 13 Plan be denied;
- 3 2. For attorney's fees and costs incurred herein;
- 4 3. For such other and further relief as this Court deems just and proper.

5 DATED this 8th day of November, 2021.

6

7 **TIFFANY & BOSCO, P.A.**

8 By /s/ Stacy H. Rubin, Esq.

9 **STACY H. RUBIN, ESQ.**

10 Attorney for Secured Creditor

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12 Las Vegas, NV 89135

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CERTIFICATE OF SERVICE

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1. On this 8th day of November, 2021, I served the following documents:

OBJECTION TO CONFIRMATION OF PROPOSED CHAPTER 13 PLAN

2. I caused to be served the above-named document by the following means to the persons as listed below:

X a. ECF System

Kevin A. Darby
kevin@darbylawpractice.com
Attorney for Debtor

William A. Van Meter
ECF@reno13.com
Trustee

1 **X b. United States mail, postage fully prepaid:**

2 Kevin A. Darby
3 4777 Caughlin Pkwy
4 Reno, NV 89519
5 Attorney for Debtor

6 Carolina Flores TT
7 429 15th Street
8 Sparks, NV 89431
9 Debtor

10 **I declare under penalty of perjury the foregoing is true and correct.**

11 DATED this 8th day of November, 2021.

12 By: /s/ Michelle Benson